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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,977	12/29/2005	Takehiko Tojo	283027US3PCT	3537
22850 7590 01/04/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER DOAN, ROBYN KIEU				
ART UNIT 3732		PAPER NUMBER		
NOTIFICATION DATE 01/04/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com



## Office Action Summary

**Application No.**

10/562,977

**Applicant(s)**

TOJO ET AL.

**Examiner**

Robyn Doan

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/206)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: 12/29/05, 3/17/06, 4/5/06, 4/19/07, 5/13/09, 7/21/09.



**DETAILED ACTION**

***Election/Restrictions***

Arguments regarding to the restriction requirement mailed 9/25/09 have been found to be persuasive, therefore, the restriction requirement mailed 9/25/09 has been withdrawn herewith.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 9, 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recited a viscosity of 100mPa·s, however, such viscosity varying with temperature, however, the claim does not recite any temperature, therefore, the claim is not clearly understood.

Claims 9 and 18 recited "flat tube", however, claim 1 does not any feature that is equivalent to such structure.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.



Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Takehana (JP '836 IDS cited reference).

Takehana discloses a hair holder (fig. 1) comprising one sheet (2) for holding a hair bundle in a prescribed shape, the hair holder retaining a hair treating agent (translated abstract).

Claims 1, 13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by DE '176 (IDS cited reference).

DE '176 discloses a hair holder (fig. 1) comprising a sheet (12) having a plurality of sealed agent packets (11) with hair treatment agent (14) sealed therein, wherein the sealed packets being formed by a packet forming sheet (10) and a side of the hair holding sheet, the packet forming sheet having a plurality of recesses (see fig. 2) which are concave in the thickness direction and in which the hair treating agent is sealed. In regard to claim 17, DE'176 further shows a step of placing a hair bundle on the hair holder and rolling up the hair holder with the hair bundle (see fig. 5) and inherently teaches the step of applying pressure to the sealed agent to break the packets thereby releasing the hair treating agent to the hair.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Aldworth (GB 207,948 IDS cited reference).

Aldworth discloses a hair holding device (fig. 2) comprising one sheet (1) for holding a hair bundle in a prescribed shape, the hair holder retaining a hair treating agent (col. 4, line 113).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takehana in view of DE '176.

Takehana discloses the essential claimed invention as discussed in claim 1 above and further shows one of the holding sheet having a water retention material (sponge), however fails to show the water retention being higher than .3g/cm<sup>2</sup> and the sheet having a Taber stiffness of 0.2mN·m. DE '176 discloses it is known in the art to have a hair holding sheet having a Taber stiffness of 0.2mN·m. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the sheet material as taught by DE '176 into the hair holder sheet of Takehana as an alternative way of holding treatment agent. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the water retention being higher than .3g/cm<sup>2</sup>, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 6, the device shown by Takena in view of DE '176 will perform the method recited in the claims during normal operational use of the device.



Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takehana in view of DE '176 as applied to claim 2 above, and further in view of WO 03/007752 (IDS cited reference).

Takehana in view of DE '176 discloses the essential claimed invention as discussed in claim 2 above except for one of the holding sheet having a plurality of holes through which a hair bundle is adapted to be threaded. WO '752 shows a hair holder (fig. 1) having a plurality of holes (7a, b) throughout the hair holder to allow the insertion of the hair bundle into the hair holder. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the plurality of holes as taught by WO '752 into the hair device of Takehana in view of DE '176 in order to facilitate the hair insertion purpose.

Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takehana in view of Wararoff (USP 4,470,423 IDS cited reference).

Takehana discloses the essential claimed invention as discussed in claim 1 above except for at least one holding sheet having a hair treating agent with a viscosity of 100mPa-s or higher. Wararoff discloses it is known in the art to have a hair treating agent with a viscosity of 100mPa-s or higher (col. 3, lines 40-43). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the hair treatment as taught by Wararoff into the hair holder of Takehana for the intended use purpose.

Claims 14, 15, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '176 in view of Takehana.



DE '176 discloses the essential claimed invention as discussed in claim 1 above except for the hair holding sheets having a shape of a flat tube forming a hollow therein. Takehana as discussed above shows a hair holding device comprising hair holding sheets forming a flat tube (see fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to form the hair holding sheets of DE '176 being a flat tube as taught by Takehana as an alternative way of styling the hair.

Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldworth in view of Wararoff (USP 4,470,423 IDS cited reference).

Aldworth discloses the essential claimed invention as discussed in claim 1 above except for at least one holding sheet having a hair treating agent with a viscosity of 100mPa·s or higher. Wararoff discloses it is known in the art to have a hair treating agent with a viscosity of 100mPa·s or higher (col. 3, lines 40-43). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the hair treatment as taught by Wararoff into the hair holder of Aldworth for the intended use purpose.

Claims 10, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldworth in view of Wararoff as applied to claim 7 above, and further in view of Takahana.

Aldworth in view of Wararoff discloses the essential claimed invention as discussed above and Aldworth further shows an outer tube (5) and an inner tube (1) inserted through the outer tube, wherein the outer flat tube forming of two sheets (1, 5)



and the inner tube being formed of the two sheets (1, 5) and having a hollow through which a hair bundle being adapted to be inserted (see fig. 1). Aldworth in view of Wararoff failed to show the outer and inner tube being flat tubes. Takehana as discussed above shows a hair holding device comprising hair holding sheets forming a flat tube (see fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to form the hair holding sheets of Aldworth in view of Wararoff being a flat tube as taught by Takehana as an alternative way of styling the hair.

Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldworth in view of Wararoff and further in view of Takahana as applied to claim 10 above, and further in view of Sturdivant (USP 3,255,765).

Aldworth in view of Wararoff and further in view of Takahana discloses the essential claimed invention as discussed above except for an inserter. Sturdivant discloses it is known in the art to have an inserter (14) to lead a hair bundle into a hair holder (11). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the inserter as taught by Sturdivant into the hair holder of Aldworth in view of Wararoff and further in view of Takahana in order to facilitate the hair insertion purpose.

Claims 9, 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Munsil is cited to show the state of the art with respect to a hair treatment holder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732